

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES RICHARD CULMER,

Defendant.

OPINION

2:12-cr-000489 (WHW)

Walls, Senior District Judge

This matter comes before the court by Defendant Culmer's April 26, 2018 motion for reduction of sentence. ECF No. 25. For the reasons that follow, Defendant's motion is granted.

Discussion

The Court assumes the parties' familiarity with the facts and recounts them only as necessary. On July 11, 2012, Defendant Culmer pleaded guilty to a one-count indictment which charged him with conspiring to possess with intent to distribute one kilogram or more of heroin under U.S.C. 21 § 841(a)(1) and (b)(1)(A), as well as U.S.C. 21 § 846. ECF No. 13. On January 8, 2013, Defendant was sentenced to 192 months of imprisonment with five years of supervised release, as well as a \$17,500 fine and a \$100 assessment. ECF No. 16 at 30:16-32:12.

At the time of sentencing, the applicable guideline provided a base offense level of 32 with a criminal history category of 5. *Id.* at 30:19-20. This produced a guideline range of 188-235 months. This Court recognized that Mr. Culmer was "accountable for less heroin" than his other co-conspirators and did not have a high rank in the criminal organization, and that he himself was affected by a heroin addiction. *Id.* at 29:4-19. Mr. Culmer was then sentenced to 192 months, the very low end of the range. *Id.* at 30:23.

After Defendant was sentenced, the United States Sentencing Commission amended United States Sentencing Guidelines § 1B1.10 by reducing the base level offense by two offense levels, and on July 18, 2014 made these reductions retroactive.

Defendant now moves to reduce his sentence pursuant to 18 U.S.C. § 3582(c)(2).

That section provides that:

in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 944(o) . . . the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the commission.

Application of § 3582(c) proceeds in two steps. “First, a district court must determine whether a prisoner is eligible for sentence modification.” *U.S. v. Toledo*, 643 F. App’x 145, 148 (3d Cir. 2016). “Second, if a defendant is eligible for a reduction, the district court considers ‘any applicable § 3553(a) factors’ to determine if the reduction is authorized ‘in whole or in part under the particular circumstances of the case.’” *Id.* (quoting *U.S. v. Dillon*, 560 U.S. 817, 827 (2010)). Those factors are:

1. The nature and circumstances of the offence and the history and characteristics of the defendant;
2. The need for the sentence imposed
3. The kinds of sentences available
4. The kinds of sentence and the sentencing range established [under the guidelines]
5. Any pertinent policy statement [of the Sentencing Commission]
6. The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
7. The need to provide restitution to any victims of the offense.

Based on the charges Mr. Culmer pled to, he is eligible for a sentence reduction. Having considered the § 3553(a) factors, especially the applicable policy statements of the Commission under subsection (5), the Court finds that a modification is appropriate.

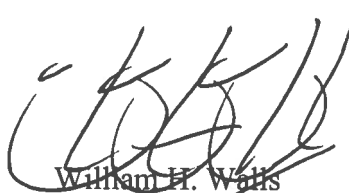
The Sentencing Commission amended the guideline range in part to alleviate the burden on the Federal Bureau of Prisons resulting from lengthy drug-related sentences. United States Sentencing Commission, *Guidelines Manual, Supplement to Appendix C.*, 72 (Nov. 1, 2016). Balancing the value of public safety against concerns about overcrowding in prison, the Commission found that the two-point reduction in drug penalties is not likely to increase the risk of recidivism and “should not jeopardize public safety.” *Id.*, at 73. The Commission’s finding on this issue indicate that the modified sentence is sufficient to “protect the public from further crimes of the defendant” under § 3553(a)(2).

As this Court stated at Mr. Culmer’s sentencing: “Th[is] punishment should sting, but it should not be Draconian.” ECF No. 16 at 29:22-23. Based on the Commission’s findings, Mr. Culmer’s sentence should more appropriately be considered under offense level 30 with a criminal history of 5, significantly changing his sentencing range to 151-188 months. Having considered the § 3553(a) factors, including the applicable policy statements of the Commission, the Court finds that a sentence of imprisonment of 151 months is sufficient, but not greater than necessary, to comply with the purposes of the sentence.

Conclusion

The Court finds that a modification to Defendant’s sentence is appropriate, and imposes a modified sentence of 151 months of imprisonment. An appropriate order follows.

DATE: 21 Aug 18



William H. Walls
Senior United States District Court Judge